



4301 North Fairfax Drive * Suite 425 * Arlington, VA 22203-1616 (703) 236-2300 * FAX (703) 236-2301

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Via eDocket

United States Environmental Protection Agency
EPA Docket
Mail code: 2822T
1200 Pennsylvania Avenue, NW
Washington DC 20460

Re: Docket ID No. EPA-HQ-OPA-2007-0584. Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule Requirements - Amendments.

The USA Rice Federation (USA Rice), located at 4301 N. Fairfax Drive, Suite 425, Arlington, VA 22203, is the global advocate for all segments of the U.S. rice industry with a mission to promote and protect the interests of producers, millers, merchants and allied businesses. USA Rice members are active in all major rice-producing states: Arkansas, California, Florida, Louisiana, Mississippi, Missouri and Texas. The USA Rice Producers' Group, USA Rice Council, USA Rice Merchants' Association and the USA Rice Millers' Association are members of the USA Rice Federation. USA Rice appreciates the opportunity to comment on this issue.

Although we are pleased with some of the changes EPA has initiated in regard to the 2007 SPCC Proposed Rule, outstanding issues do remain. We have serious concerns about these issues that we hope to address here with the agency. USA Rice will continue to work with EPA on creating a rule practical and relevant to our industry. Once that is established, we will work with EPA to encourage compliance for all our members; to inform, educate, and train as necessary.

USA Rice appreciates the opportunity to comment on this proposal and looks forward to working with the agency in the future.

GENERAL COMMENTS:

USA Rice appreciates the agency's acceptance of a definition of a farm that was presented to the agency in past comments by USDA and farm groups. We also appreciate the proposed exemption of home heating oil tanks and pesticide sprayers and mix containers from the rule. We also support the proposed exemption from regulations for loading racks, agreeing with EPA that loading racks are not a usual feature of a farm.

In addition, we ask that EPA once again take note that farms are not like other regulated entities in the SPCC realm that the agency has been dealing with since 1973. Farms will not have 'environmental manager' personnel ready to follow thru on this new regulation. Neither will they necessarily have large financial resources to divert from other projects to devote to this regulation. Most resources must be devoted annually to inputs to the farm including seeds, fertilizers, pesticides and fuels. Whereas other types of businesses may have financial resources built up over years of profits, most farm profits are reinvested into the farm for the inputs needed for the following year.

On another issue, when the agency does propose a new deadline, the date must allow for the problems of farming. Producers who have to comply with the rule in such things as building berms, etc, will not be able to do so during ag seasons such as planting and harvesting. These important seasons severely restrict the time producers have to work on auxiliary projects. Furthermore, it will take time for farms with multiple, spread-out tanks, to comply with constructing secondary containment or implementing other parts of the rule. These farms are not like businesses where one berm can be put around all the facilities' tanks.

In discussions with both EPA and USDA, the USA Rice has learned that when new rules are promulgated, information is disseminated, but no real data exists on how long it truly takes an industry to fully understand and come into compliance with new requirements.

EPA publishes final rules in the federal register, emails stakeholders and often communicates in some form with trade organizations. The USDA publishes information in local newspapers, purchases radio time, participates in mailings and often has meetings with leaders in local communities.

Unofficial EPA and USDA estimations for penetration of an industry sector with information on new regulatory requirements range from three months to one year for a full understanding of new requirements depending on the complexity of the rule. Therefore, once EPA publishes a final rule, we believe at a minimum, an additional two years would be necessary for compliance for a total of three years.

Determining which farms have to comply with all or part of the final rule, and how they will do it, will take some time. USDA and the states should be given timelines to facilitate implementation and compliance before EPA enforcement can take place. This additional time will provide farmers and others the opportunity to work within their

organizations and with appropriate government agencies, including USDA, regarding the possible development of a model plan or set of guidelines that could be utilized to meet such requirements.

We also urge EPA to set up a hotline for producers seeking information and clarity on the rule and how it applies to their operation. In anecdotal USDA examples, hotlines were operational for approximately two years in conjunction with other educational programs to ensure maximum compliance. The hotline allowed producers to inquire about deadlines, report issues and problems, and clarified requirements. We also strongly urge that the hotline be able to send out 'plain-English' documentation to back up their oral advice.

Furthermore we seek the creation of a website dedicated specifically to SPCC requirements, offering 'plain-English' information on rules, clearly stating deadlines, providing templates and making clear the formal review, appeal and mitigation process.

ISSUE-SPECIFIC COMMENTS

Issue 1. EPA's self-certification criteria (Alternative Qualified Facility Eligibility Criteria for Farms) are nonsensical when compared to the leeway given to small production oil facilities.

First, the 10,000-gallon trigger causes great concern for those within the agricultural industry. Many farm operations would exceed the proposed 10,000-gallon threshold, even with the new proposed definition of flexibility. Therefore, USA Rice urges the EPA to adopt a 20,000-gallon threshold as reasonable and critical for farm operations. EPA has still not produced the data needed to determine a meaningful trigger for all sectors of agriculture – field flood irrigation, center pivot irrigation, crop farms, ranches, livestock operations, related agribusinesses, etc. - which pose similar low risks for spills and are often seasonal in nature.

We understand that the 10,000-gallon trigger was established in the SPCC rules to remain consistent with those in other regulations related to oil discharges, like the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan or NCP). The NCP was developed in 1968 as a response to a massive oil spill from the oil tanker *Torrey Canyon* off the coast of England. Revisions to the NCP, of which the most recent was finalized in 1994, were again in response to a massive spill, this time the *Exxon Valdez*. Given its unique characteristics and lack of any significant spill history, the agriculture industry cannot be compared to the spills of huge oil tankers nor should it be regulated as such. Before any rule is applied to our industry, EPA must evaluate the threat (if any) the industry presents and establish rules applicable to the industry, including appropriate triggers. [The National Oil and Hazardous Substances Pollution Contingency Plan](#) (and it's threshold) [has little or no relevance to agriculture](#).

As fuel prices continue to stay high or increase, it is also more fiscally responsible for growers to seek tanks of a size that can accept bulk orders from their local supplier. The agency's action on a 10,000-gallon threshold (with the criteria of two, 5,000-gallon tanks) limits that response as growers may not be able to move to bulk orders and save money because the loss of a self-certification plan would require the hiring of Professional Engineers (PEs) at substantial costs. By limiting choices among growers EPA will increase costs on a segment of the U.S. economy that has the least power to pass the costs along to their customers.

Also, growers will often buy used tanks for application in the future if expansion is warranted. These empty tanks, along with seasonal-use tanks that stand empty part of the year, may take the facility capacity over 10,000 gallons. Why are they counted for a low capacity threshold on farms when the same capacity or greater is ignored at oil production facilities? That leads us to our next point.

Second, EPA establishes that a facility, including agriculture, with an above ground storage capacity of 10,000 gallons and that passes certain spill criteria may be eligible for a self-certification plan in lieu of a PE certified plan. EPA then asks if a higher threshold, or a change in criteria, is warranted for farms.

Farming is a fairly unique industry in many ways. Unlike other standard industries agriculture varies greatly in what it produces and how it does so. The 'facilities' vary greatly in size, shape, location, integrity, geography, production methods, production equipment, costs, profits, managerial structure, ownership, leasing structure, etc. It is the one industry where change in weather, for as little as one day or night, can ruin an entire year's work and profits. Most farms do not have extra staff on hand to designate as environmental managers nor can they afford to hire one. They will not have a corporate budget to pay for secondary containment and PE's for each of their tanks. EPA's efforts to define agriculture in relation to the heavy industries that the agency is more comfortable with will only cause problems for agriculture and eventually the environment. We believe that the agency needs to address farm self-certification with different criteria and a higher capacity threshold.

In further consideration of the 10,000-gallon threshold for qualified facilities however, the agency offers small oil production facilities a self-certification plan with similar criteria but not limited to a storage capacity threshold "because they would likely have greater than 10,000 gallons in aggregate aboveground oil storage capacity." The rice industry does not understand how a facility that produces oil on a constant basis can be granted such leeway while farms are not. We also do not understand how EPA can apply a 10,000-gallon threshold to agriculture while ignoring it in another industry ("...on an approach...for an oil production facility...to be considered a qualified facility, notwithstanding the tank storage capacity at the facility."). In irrigated agriculture, many tanks that run the irrigation systems stay empty a large part of the year. They are only used at times when irrigation is needed and then they are often used extensively requiring constant resupply. Once the season is past the tanks stand empty until time to refill them

for the next season. At the prices of fuel, growers cannot afford to keep seasonal tanks full year round. Not only does this tie up money that is needed elsewhere, it prevents the grower from playing the market and ordering fuel at times of lower prices, and it increases the likelihood of theft of the fuel.

As mentioned before, agricultural-use tanks are also purchased at auctions and sales and stockpiled against future need. For small oil production, EPA proposes to ignore tank capacity because the owner/operator "...provides adequate container capacity at his facility to ensure sound and continuous operations...". The Agency does not offer the same leeway for growers who may have extra capacity.

Issue 2. Definition of "facility" needs more clarification.

USA Rice appreciates the Agency's recognition of the fundamental nature of farming -- that farming operations are not necessarily one fixed location but can be a collection of fields which may be contiguous *or* noncontiguous.

The Agency's most recent proposal modifies the definition of "facility" to clarify that contiguous or non-contiguous building properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities. The proposed revisions will allow an owner or operator the flexibility to determine facility boundaries based on many factors, including ownership or operation of the buildings, structures, containers, and equipment on the site, the activities being conducted, property boundaries and other relevant considerations unique to the agricultural industry. USA Rice is very supportive of this proposed revision as it will allow for the variations in operational structures that are common in farming. However, within this proposal, we urge the Agency to further clarify its intent [for future reference](#) in the guidance provided to inspectors to ensure the fewest number of 'differing interpretation' incidences during implementation. Also, we urge the Agency to make clear to the agricultural industry and inspectors, the process and timeline for which [any](#) disagreements resulting from this proposed flexibility will be addressed. We ask that the Agency consider that at any given time, a producer may be planting, harvesting or engaged in some other time sensitive activity during the year. To that end, we urge that a timeframe no shorter than 120 days be provided for a producer to address any possible compliance concerns, including but not limited to differences of opinion on a facility determination, identified by an inspector.

Issue 3. Self-Certification Proposal/Professional Engineer requirement will provide negligible benefits.

Under EPA's proposed self-certification approach, facility owners/operators of qualified facilities choosing to self-certify their SPCC plans may not deviate from any requirement of the SPCC rule under Sec. 122.7(a)(2) (with two exceptions) and may not make impracticability determinations in their SPCC plans as described under Sec. 122.7(d). The two exceptions are that facility owners/operators of qualified facilities choosing to

self-certify their SPCC plans would have flexibility with respect to the security requirements and container integrity testing.

While the USA Rice, in general, supports the notion of self-certification, in order to make this option viable and meaningful to our industry, the EPA must work with the industry to allow for more flexibility in this option. Knowing that farming operations and other agricultural entities vary in size, layout, topography, etc., EPA must consider changing its position and allowing entities to self-certify while incorporating the use of some alternative environmentally equivalent measures and applying impracticability determinations for qualified facilities. Without this flexibility, self-certification may be impractical for our industry. Also, we disagree with comments made by some in the professional engineering field regarding self_ certification. In testimony before the Senate Committee on the Environment and Public Works (12/2005), Dr. James Corbett of the University of Delaware stated “exempting PE certification from SPCC plans on the basis of cost (or regulatory burden) may increase the risk of spills from self-certifying facilities where managers without engineering training and/or technicians do not possess a standard professional knowledge base, ascribe to a professional code that places public protection highest, or share individual legal liability for their judgments.”

We find it unusual that this situation has existed in rural America for decades, yet the catastrophic events predicted by certain experts have not occurred. Were the case as dire as indicated, significant spills would regularly occur. However, the evidence in this regard is so small it borders on nonexistent.

In fact, it seems reasonable to believe that because these facilities are utilized every day by people who bear immediate and direct liability, both from an operational as well as a legal perspective, their facilities may be better engineered, more practical and less prone to failure than the one-size-fits-all methodology that contract experts default to.

Furthermore, the rice industry strongly contends that members of the agricultural sector – who grow this nation’s food, raise their children on the land, and rely on well water from their property -- are highly motivated to ensure that their environmental practices are sound. These producers strive daily to ensure a safe environment for their children and the communities in which they live.

It is also interesting to note that other departments of the agency have, in the past, sought to provide continuous work to Professional Engineers by requiring them to draft compliance plans, such as for stormwater control, only to retreat from that position. In fact, many of those compliance plans were allowed to be drafted and made available through industry associations as a means of reducing individual costs and increasing constituent knowledge of the regulation thereby increasing environmental protection. In this case the Agency seems to be rejecting the idea of reducing burden and cost to the regulated community in favor of requiring excessive costs.

Issue 4. Tank security requirements belong with DHS.

The Agency should remove the tank security requirements from the SPCC rule. The security requirements are not environmentally protective and in some cases, as EPA admits in the document, may be contraindicated. For example, lighting up every tank on a farm, located in fields possibly many miles from the owner, will invite intruders especially with today's high fuel prices. Each time a tank is opened and product is removed for theft the chance of environmental harm increases.

Farms are currently being deluged with security regulations, both from local, state and federal agencies. The Department of Homeland Security (DHS) has just published one rule affecting the security of farms and is working on more. EPA has no business in this regulatory arena and should leave security up to the department that was created for that express purpose. EPA's attempts will help to create costly, burdensome and duplicative requirements for a low risk industry.

Farm tanks that suffer mischief will naturally be secured in various means by the owner in an attempt to thwart future problems. Security for other tanks that are in unknown locations and are not targets should be left to the owner. This requirement will be an unnecessary burden to farms.

Issue 5. Tank Integrity testing criteria needs to be visual inspection only.

As stated previously, most irrigation tanks are seasonal-use only and there may be several tanks on a farm. Requiring expensive hull testing for each is costly and burdensome, outweighing the risk. EPA has not shown a history of spills associated with these tanks to validate the imposed costs. Furthermore the tanks are subject to daily visual inspections when they are holding fuel during the irrigation season and they are not necessarily subject to the continuous pressures of larger storage tanks that sometimes lead to catastrophic failures.

Issue 6. EPA's Regulatory Impact Analysis¹ has serious flaws.

In the RIA the Agency is quick to point out all the cost savings to farms that they've calculated, adding to the argument that this rule will be less costly than it actually will be. Several things stand out:

- EPA estimates an approximate figure of 152,000 affected farms² based on USDA numbers. Nowhere does EPA mention the USDA numbers presented in the 2005 round of proposals that numbered potentially affected farms closer to 400,000.
 - EPA generated their estimates based in part of assumptions plugged into complex calculations. One assumption, that 1997 and 2002 "total fuel

¹ Regulatory Impact Analysis (RIA) for the Proposed Amendments to the Oil Pollution Prevention Regulations (40 CFR PART 112), Vol. 1. USEPA and Abt Associates, Inc. September 2007.

² RIA. Vol 1. Pg. 115.

- expenditures by farms was identical” ignores the fact that farms used less fuel as prices increased after the September 11, 2001 attack.³
- Another incorrect assumption is “that all gasoline and diesel storage is aboveground.”⁴
 - EPA states, “The best federal source of on-farm fuel storage data is the 1982 U.S. Census of Agriculture...”⁵ That source, as represented in a chart, records approximately 1,124,000 million farms in 1982.⁶ EPA then uses a negative growth rate developed from 1996 to 2005 farm data to predict a medium estimate of only 151,000 SPCC-regulated farms.⁷ However, the Agency then states that 2002 data shows over 2 million farms storing fuel, based on the 2002 fuel oils expenditures multiplied by the ratio of diesel expenditure to total fuel oil expenditure in 1997.⁸ EPA’s numbers do not add up and appear to underestimate the farming community that will be regulated by this rule.
- EPA’s cost savings of approximately \$3.6 million due to exempting pesticide application equipment is based on a report from one state. As stated many times over, agriculture is an incredibly diverse industry. The limited data set calls into question any numbers that the Agency attempted to derive from it.⁹
 - EPA estimates a residential heating oil tank exemption savings of \$1,550 to \$2,210 per farm. EPA also states that they estimate those same tanks to register between 413 gallons and 1045 gallons. This is a false savings because:
 - The original 1973 rule exempted 660 gallon tanks for the express purpose of exempting residential heating oil tanks;
 - The current threshold of 1,320 gallons is above the upper gallon size of heating oil tanks as estimated by EPA at 1045 gallons; and,
 - Savings on annual SPPC expenditures for residential tanks realized by homeowners is nonexistent because, in real life, practically no one has applied SPCC rules to their home heating oil tanks.¹⁰
 - EPA further damages their credibility by examining Clean Water Act violation data from 2001 to 2006. In over 10,000 violations in that time period, only 292 involved oil spills of any type, and only **one** of those involved a farm. EPA is moving to place a costly and burdensome rule on the agricultural industry with no data to show a risk justifying the cost.¹¹

³ Regulatory Impact Analysis (RIA) for the Proposed Amendments to the Oil Pollution Prevention Regulations (40 CFR PART 112), Vol. 2. USEPA and Abt Associates, Inc. September 2007. Pg. 37.

⁴ RIA. Vol 2. Pg. 38.

⁵ RIA. Vol 2. Pg. 38.

⁶ RIA. Vol 2. Pp. 39-40.

⁷ RIA. Vol 2. Pg. 41.

⁸ RIA. Vol. 2. Pg. 42.

⁹ RIA. Vol 1. Pg. 116.

¹⁰ RIA. Vol 1. Pg. 133.

¹¹ RIA. Vol. 2. Pp. 155-156.

- In the RIA, the Agency states they are considering the option of exempting farms below an as yet undetermined threshold. This would generate cost savings of around \$804 million if the capacity threshold is set at 10,000 gallons.¹² Based on EPA's numbers shoring up the need for this rule and the lack of risk, the Agency should provide for an exemption at a minimum of 10,000 gallons.

CONCLUSION:

USA Rice thanks the agency for the many instances where they listened to and took into consideration our previous comments. These instances include the exemptions for home heating oil tanks and pesticide application equipment, alleviation for spills occurring from disasters and reducing the recordkeeping requirement from ten years to three years, to name a few.

However many issues of concern still remain to the rice industry. Foremost among them are the inequities built into the criteria for qualified facilities, where agriculture is treated more severely than oil production facilities. Mixed in with this is the criteria for self-certification that doesn't allow for any leeway from certain performance standards, and the continuing requirement to use professional engineers.

We also believe that the facility definition needs more clarification at the inspector level and that a lengthy period of time needs to be granted in regulation for working out any difference of opinions between inspectors and growers. We further ask that tank integrity testing be reduced to visual inspection and that security issues be deleted from this rule and left to DHS to handle.

If you have any questions please don't hesitate to contact me at (703) 236-1445.

Sincerely,



Steve Hensley
Director Regulatory Affairs
USA Rice Federation

¹² RIA. Vol. 1. Pp. 125-127.